Notifications, &c., by the Government of India.

LEGISLATIVE DEPARTMENT.

NOTIFICATION

Simla, the 24th September 1880.

No. 15.—Whereas the Secretary of State for India has by Resolution in Council declared the provisions of the Statute 33 Vic., cap. 3, section 1, to be from and after the 1st October 1877 applicable to the territories forming the Chief Commissionership of Coorg;

And whereas the Chief Commissioner of Coorg has proposed to the Governor General in Council a draft of the following Regulation, together with the reasons for proposing the same;

And whereas the Governor General in Council has taken such draft and reasons into consideration, and has approved of such draft, and the same has received the Governor General's assent;

In pursuance of the direction contained in the said section, the said Regulation is now published in the *Gazette of India*.

REGULATION No. III OF 1880.

A Regulation to declare and amend the law relating to the collection of the Public Revenue in the Province of Coorg.

Preamble.

WHEREAS it is expedient to declare and amend the law relating to the collection of the public revenue in the Province of Coorg; It is hereby enacted as follows:—

Interpretation-clause. "Landholder."

1. The term "Landholder," as used in this Regulation, shall mean and include all holders of land under jamma, sagu or otherwise subject to the payment of revenue direct to Government.

"Public revenue."

"Public Revenue" due on land shall, for the purposes of this Regulation, be taken to include cesses or other dues payable to Government on account of water supplied for irrigation.

"Chief Commissioner" and "Superintendent."

"Chief Commissioner" and "Superintendent," as used in this Regulation, mean the Chief Commissioner of Coorg and the Superintendent of Coorg respectively.

Land, the security for the revenue.

2. The land, the buildings upon it and its products shall be regarded as the security for the public revenue.

Landholder when and to whom to pay his khist.

3. Every landholder shall pay to the Superintendent, or other officer empowered by him to receive it, the revenue due upon his land on or before the day on which it falls due, according to the khistbandi or other engagement; and where no particular day is fixed, then within the time when the payment falls due according to local usage; Provided that it shall be lawful for the Chief Commissioner, by notification published in the official Gazette, to alter and fix from time to time the amount of the several khists or instalments, and the dates at which they shall respectively become payable.

The whole or portion of a khist remaining unpaid shall be deemed to be an arrear of revenue.

4. When the whole or a portion of a khist is not so paid, the amount of the khist or of its unpaid portion shall be deemed to be an arrear of revenue.

Arrear of revenue how to be recovered.

5. Whenever revenue is in arrear, it shall be lawful for the Superintendent, or other officer empowered by the Superintendent in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property, in manner hereinafter provided.

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6. The Chief Commissioner may, from time to time, appoint such officer or officers as may be necessary to sell, subject to all the rules and provisions contained in this Regulation, property distrained for arrears of revenue. Such officer or officers shall be subject also to the control and superintendence of the Superintendent.

Chief Commissioner empowered to appoint officer to sell distrained property.

7. Arrears of revenue shall bear interest at the rate of six per cent per annum ; but the Superintendent may remit, for sufficient cause shewn, the interest due on the arrear or any part of it.

Arrears of revenue to bear interest.

8. In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed :—

Rules for seizure and sale of movable property.

First.—The Superintendent, or other officer empowered by the Superintendent in that behalf, shall furnish to the person employed to distrain the property of a defaulter a demand in writing, and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person employed to distrain shall produce the writing which, if the arrear, together with the batta due to him under section forty-eight, be not at once paid, shall be his authority for making the distress ; and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained and the name of the place where it may be lodged or kept.

Demand in writing.

Defaulter to be served with a copy.

Second.—The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount, with interest, batta and all the expenses of the distress, be previously discharged.

Writing to state that the distrained property will be sold.

Third.—When a defaulter is absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence, or on the premises where the property may have been distrained, before the expiration of the third day calculating from the day of the distress.

Mode of service when defaulter is absent.

9. When the amount due has not been paid pursuant to the terms of the demand, and no arrangement for securing the same has been entered into to the satisfaction of the Superintendent, or other officer empowered by the Superintendent in that behalf, the distrainer shall transmit an inventory of the property distrained to the nearest public officer empowered by the Chief Commissioner, under section six, to sell distrained property, in order that it may be publicly sold for the discharge of the arrear due, with terest, batta and cost of distraint.

Consequence of defaulter neglecting to pay after notice.

10. Where a defaulter tenders payment of the arrear demanded after his property has been distrained, and prior to the day fixed for sale, together with payment of interest, batta and all necessary expenses attending distress, the distrainer shall receive the amount immediately upon the same being tendered, and shall forthwith release the property.

On tender of arrear and expenses prior to day of sale, distress to be withdrawn.

11. The distrainer attaching the crops or ungathered products of the land belonging to a defaulter may cause them to be sold when fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season, and stored in proper places until sold. In the latter case, the expense of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

Distrained crops how to be dealt with.

When crops or products belonging to a tenant have been sold, it shall be lawful for such tenant to deduct the value of the crops or products so sold from any rent which may be due by him, then or afterwards, to the defaulter, in respect of the land on which such crops or products have been grown. It shall also be lawful for a tenant whose crops are attached for an arrear of revenue to pay the arrear and deduct the amount in the aforesaid manner from any rent due by him, then or afterwards.

Tenant may pay arrears and terminate attachment.

12. The distrainer shall not work the bullocks or cattle, or make use of the goods or effects distrained ; he shall provide the necessary food for the cattle or live-stock, the expense attending which shall be defrayed by the owner upon his redeeming the property or from the proceeds of the sale in the event of its being sold.

Distrained cattle or goods not to be used.

13. Where property distrained is stolen or lost or damaged by reason of the necessary precautions for its due preservation not having been taken, or from its having been improperly worked or made use of, the amount of such loss or damage shall be recoverable by summary process by the Superintendent from the officer whose neglect or act occasioned the loss or damage, and the amount when recovered, shall be paid to the person damnified.

Officer responsible on neglect in respect of distrained property.

14. The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the amount of the arrears; and such cattle and agricultural implements as may be required by the defaulter for the purpose of cultivation shall be exempt from attachment.

Distress to be proportionate to the arrear.

15. Distress shall be made after sunrise and before sunset, and not otherwise.

Time of distress.

16. Where a defaulter makes a fraudulent conveyance of property to prevent the distress for arrears, any Civil Court of competent jurisdiction, upon proof thereof, shall summarily cause the property to be delivered up to the distrainer. The defaulter shall further be liable to the penalties prescribed by section 424 of the Indian Penal Code.

Penalty for fraudulent conveyance of property to prevent distress.

17. Where any person, not being a defaulter or responsible for a defaulter, claims a right to the property distrained, and the distrainer may notwithstanding cause the same to be sold, such claimant, on proof of such right in any Civil Court of competent jurisdiction, and in the event of the distrainer being unable to prove the responsibility for the arrear of revenue on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with interest, costs and damages, according to the circumstances of the case. But claims to crops upon the ground, or to gathered products of the ground, attached in the possession of the defaulter, whether founded upon a previous sale, mortgage or otherwise, shall not bar the prior claim of revenue due from the ground upon which such crop or product may have been grown.

Claims to property distrained and sold.

Revenue to be the first charge.

18. Where it is proved to the satisfaction of any Civil Court of competent jurisdiction that any person has forcibly or clandestinely taken away property once distrained, the Court may summarily cause such property to be restored to the distrainer. The offender shall further be liable to the penalties prescribed by the Indian Penal Code.

Penalty for forcibly or clandestinely taking away distrained property.

19. It shall be lawful for the distrainer to force open any stable, cow-house, granary, godown, out-house or other building, and he may also enter any dwelling house, the outer door of which may be open, and may break open the door of any room in such dwelling-house, for the purpose of attaching property belonging to a defaulter and lodged therein: Provided always that it shall not be lawful for such distrainer to break open or enter any apartment in such dwelling-house appropriated for the zanana or residence of women, except as hereinafter provided.

What places distrainer may force open.

20. Where a distrainer has reason to suppose that the property of a defaulter is lodged within a dwelling-house the outer door of which is shut, or within any apartments appropriated to women which by the usage of the country, are considered private, such distrainer shall represent the same to the officer in charge of the nearest Police-station. On such representation, the officer in charge of the said station shall send a Police officer to the spot, in presence of whom the distrainer may force open the outer door of such dwelling-house, in like manner as he may break open the door of any room within the house except the zanana. The distrainer may also, in the presence of the Police officer, after due notice given for the removal of women within a zanana, and after furnishing means for their removal in a suitable manner (if they be women of rank who according to the customs of the country cannot appear in public), enter the zanana-apartments for the purpose of distraining the defaulter's property deposited therein; but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants.

Powers of distrainer to force open doors in the presence of a Police officer.

21. Persons entering the apartments of women or forcing open the outer door of dwelling-houses contrary to the provisions of this Regulation shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees, or to imprisonment of either description for a term which may extend to six months.

Punishment for unlawful entry.

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22. The public officer empowered by the Chief Commissioner, under section six, to sell distrained property, shall cause to be affixed to the outer door of the defaulter's house, or on the premises where the property may have been distrained, a list of the property to be sold, with a notice specifying the place where, and the day and hour at which, the distrained property will be sold, and shall cause proclamation of the intended sale to be made by affixing a copy in the village ambála or meeting-place, or by beat of drum, or by other customary mode in the village to which the lands on which the arrear has accrued may belong, and in such place or places as the Superintendent, or other officer empowered by the Superintendent in that behalf, may consider necessary to give due publicity to the sale.

Proclamation to be made of the time of sale, and of the property to be sold.

No sale shall take place until after the expiration of a period of fifteen days from the date on which the notice may be published as above stated.

23. At the appointed time, the property shall be put up in one or more lots as the said officer may consider advisable, and shall be disposed of to the highest bidder. Where the property is sold for more than the amount of the arrear, the overplus, after deducting expenses of process and interest, shall be paid to the defaulter.

Sale how to be conducted.

24. The property shall be paid for in ready money at the time of sale, or as soon after as the officer holding the sale shall appoint; and the purchaser shall not be permitted to carry away any part of the property until he has paid for the same in full.

Payment on the purchase of distrained property how to be made.

Where the purchaser fails in the payment of the purchase-money, the property shall be re-sold, and the defaulting purchaser shall be liable for any loss arising, as well as the expenses incurred, on the re-sale. Where the property on the second sale is sold for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

Re-sale in case of default.

25. Before the Superintendent, or other officer empowered by the Superintendent in that behalf, proceeds to attach the land of the defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid.

Demand to be served prior to attachment of land.

Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

Mode of service.

26. When the amount due has not been paid pursuant to the terms of the demand, and no arrangement for securing the same has been entered into to the satisfaction of the Superintendent, or other officer empowered by the Superintendent in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

Consequence of defaulter neglecting to pay.

27. The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land and by publication of the notice in the official Gazette.

Mode of attachment.

28. It shall be lawful for the Superintendent, when attaching the land of a defaulter, or at any time during such attachment, to assume the management of the property attached. In such case he shall appoint an agent with a proper establishment of officers to manage the property, and shall give the agent a certificate of appointment with written instructions under his seal and signature, and the expenses of management shall be defrayed out of the income of the property: Provided always that where the property may be too inconsiderable to admit of its being charged with the salary of an agent, it shall be committed to the care of such Revenue-officer as the Superintendent may select, who shall be subject to all the provisions hereinafter contained in reference to agents.

Appointment of agents.

In certain cases Revenue-officer to take charge.

Notice of assumption of management.

29. Notice of the assumption of management shall forthwith be served on the defaulter in the manner described in section twenty-five, and shall be notified by public proclamation on the land and by publication in the official Gazette.

Duties of agent.

30. It shall be the duty of the agent, during the continuance of management under section twenty-eight, to collect the rents and profits due, or accruing due, upon the estate, according to the engagements subsisting between the defaulter and the parties holding under him, or according to established usage where no specific engagements exist.

The agent shall keep accounts of all his receipts and disbursements, and submit the same and pay over the balance to the Superintendent, or other officer empowered by the Superintendent in that behalf, monthly, or whenever required; and the defaulter shall be at liberty to inspect the accounts at all reasonable times, and to take copies of the same at his own expense without fee.

Liability of agent to suit or prosecution.

31. It shall be lawful for the defaulter to proceed by prosecution or suit against the agent in respect of any criminal or illegal act done by him to the injury of the defaulter or his estate; and all tenants or other persons holding by subordinate title shall have the same remedies against him as they would have had against the defaulter if the act were done by the defaulter.

Effect of existing agreements between landholder and tenants.

32. All engagements entered into between the landholder and his tenants, except such as are hereinafter mentioned, shall be binding upon the Superintendent during attachment; but all such engagements made collusively with a view to defeat or delay the effect of the attachment, and all leases of land at a rate lower than the usual rates of assessment, and not made *boná fide* for the purpose of erecting factories or buildings, or of bringing waste-land into cultivation, and all engagements made subsequently to attachment, shall be nul and void against the Superintendent if he shall so declare; subject, however, to the right of the parties to such agreement to bring a suit against the Superintendent in the ordinary tribunals to establish the same; and all charges or incumbrances upon such land shall be postponed to the payment of the public revenue.

Payments by tenants.

33. All payments on account of rent or profits actually due made before public notice of assumption of management, to or on behalf of any landholder by any person holding under him, shall be valid against the Superintendent; and all such payments made after public notice of such assumption, or made before they were actually due, shall be nul and void against the Superintendent, who shall be entitled to recover as arrears of rent the full amount from the parties by whom it was paid, leaving them to sue the defaulter in the ordinary courts of law.

Mode of settlement on withdrawal of attachment.

34. All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due, and interest thereon at the rate of six per cent, per annum; and as soon as all arrears, interest, costs of attachment and expense of management have been liquidated, the attachment shall be withdrawn, and a full account rendered of all receipts and disbursements during its continuance.

Persons interested in land may release it from attachment.

35. Any person claiming an interest in land which has been or is about to be attached may obtain its release by paying the arrears, interest and costs incurred; and all such sums, if paid by a tenant, may be deducted from any rent then or afterwards due by him to the defaulter; and if paid by a *boná fide* mortgagee or other incumbrancer upon the estate, shall constitute a debt from the defaulter to him, and shall be a charge upon the land, but shall only take priority over other charges according to the date at which the payment was made.

Rules to be observed in sale of immovable property.

36. In the sale of immovable property under this Regulation, the following rules shall be observed:—

Public auction.

First.—The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Superintendent, or other officer empowered by the Superintendent in that behalf. The time may be either previous to or after the expiration of the official year.

Second.—Previous to the sale, the Superintendent, or other officer empowered by the Superintendent in that behalf, shall issue a notice thereof in English and in Kanarese specifying the name of the defaulter, the position and extent of land and of the buildings thereon, the amount of revenue assessed on the land or upon its different sections, the proportion of the public revenue due during the remainder of the current official year, and the time, place and conditions of sale. This notice shall be fixed up one month at least before the sale in the Superintendent's Office and in the taluk cutcherry, in the nád cutcherry and on some conspicuous part of the land.

Notification one month before sale.

Third.—A sum of money equal to fifteen per cent of the price of the lands shall be deposited by the purchaser in the hands of the Superintendent, or other officer empowered by the Superintendent in that behalf, at the time of the purchase; and where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable to forfeiture.

Deposit and payment of balance.

Fourth.—Where the purchaser refuses or omits to deposit the said sum of money, or to complete the payment of the remaining purchase-money, the property shall be re-sold at the expense and hazard of such purchaser, and the amount of all loss or expense which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue. Where the lands on the second sale are sold for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

Re-sale in default of payment.

Fifth.—All persons bidding at a sale may be required to state whether they are bidding on their own behalf or as agents, and in the latter case to deposit a written authority signed by their principals. If such requisition be not complied with, their bids may be rejected.

Agents to name their principals.

37. The defaulter, or any person acting on his behalf or claiming an interest in the land, may tender to the officer appointed to conduct the sale the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate or in taking the steps necessary for sale, and thereupon the sale shall be stayed: Provided that such tender must be made before sunset on the day previous to that appointed for the sale, and all sums so paid by any tenant, or *bonâ fide* mortgagee, or other incumbrancer, shall be deemed payments under section thirty-five.

Tender of arrears up to sunset on day previous to sale.

38. Lands purchased at a public sale shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Superintendent, which shall be conclusive evidence of the fact of the purchase, and no proof of the Superintendent's seal or signature shall be necessary, unless the authority before whom it is produced has reason to doubt its genuineness.

Purchaser to be registered.

Effect of certificate.

39. When lands are purchased at public sale, the Superintendent, or other officer empowered by the Superintendent in that behalf, shall publish in the villages in which the land sold may be situated, in the cutcherry of the taluk and nád, in the head cutcherry of the district, and in the official Gazette, the name of the purchaser and the date of purchase, together with a declaration of the lawful transfer to such purchaser of all the rights and property of the former landholder in the said lands.

Proclamation of sale.

40. Where, notwithstanding such publication, any lawful purchaser of land is resisted and prevented from obtaining possession of his purchased land, any Court of competent jurisdiction, on application and production of certificate of sale provided for by section thirty-eight, shall cause the proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the purchased lands had been decreed to the purchaser by a decision of the Court.

Delivery of possession.

41. All contracts entered into by the defaulter with his tenants, and all payments to him by them, shall be binding upon the purchaser to the same extent and under the same conditions as laid down in sections thirty-two and thirty-three of this Regulation.

Contracts with and payments to defaulter how far binding on purchaser.

51. Every person making a payment of revenue shall be entitled to a receipt for the same, signed by the Superintendent, or other officer empowered by the Superintendent in that behalf;

Receipts of payment of revenue.

Such receipt shall state the name of the person making the payment and the subject-matter in respect of which it is paid, and, in case of land-revenue, shall describe the land on which the assessment is due, and the names of the persons entered in respect thereof in the settlement account.

52. No Court of civil judicature shall take into consideration or decide any question as to rate of land revenue payable to Government, or as to the amount of assessment fixed or to be hereafter fixed by the Government.

Civil Court not to take cognizance of questions relating to rate of revenue.

53. Nothing contained in this Regulation shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Regulation, except as hereinbefore provided, from applying to the Civil Courts for redress: Provided that Civil Courts shall not take cognizance of any suit other than a suit for compensation instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

Suits by persons aggrieved by proceedings under this Regulation.

Limitation of suits.

54. No suit brought against the officer holding at any time the office of Superintendent of Coorg by any person deeming himself aggrieved by anything done or purporting to be done under this Regulation shall abate by reason of the departure from his district of the officer against whom such suit shall have been brought; but the suit may be continued against the successor of such Superintendent in all respects as though it had been instituted against himself. A suit may be brought against any Superintendent in his official capacity on account of anything done or purporting to have been done under this Regulation by his predecessor subject to the limitation prescribed in the preceding section: Provided that no Superintendent shall be personally liable for any official act of his predecessor.

Suits against Superintendent to survive against his successor,

or to be originally maintainable against him.

No personal liability for acts of predecessor.

55. This Regulation shall take effect from the date of its publication in the official Gazette.

D. FITZPATRICK,
Secretary to the Govt. of India.